



Pool Automation Subscription Contract

Terms and Conditions

Pooled Energy Pty Ltd
ABN 31 163 873 078

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CONTRACT TERMS AND CONDITIONS

1. PARTIES

1. Pooled Energy Pty Ltd (ABN 31 163 873 078), who sells and provides Pool Services to you at your premises (in this Contract referred to as “we”, “our” or “us”); and
2. You, the customer to whom this Contract applies (in this Contract referred to as “you” or “your”).

2. CONTRACT

These terms and condition (**Terms**), once accepted by you in accordance with the Terms, form the contract between you and us (**Contract**).

This Contract is for the sale of Pool Services to you at your premises. It replaces and supersedes your current contract with us which formerly included the provision of bundled energy and pool automation services (**Superseded Contract**).

In addition to this Contract, National and State consumer laws also contain rules about the sale of pool services. Pooled Energy will comply with these rules in its dealings with you.

More information about this Contract and other matters is on our website at: www.pooledenergy.com.au

3. DEFINITIONS AND INTERPRETATION

- (a) Definitions of the capitalised terms used in this Contract are also given at the end of these Terms.
- (b) Singular and plural, and male and female terms, shall be used interchangeably.

4. APPLICATION OF TERMS

This Contract applies to you if you have a swimming pool and you have accepted our offer to provide Pool Services to you on these Terms.

5. ACCEPTANCE OF CONTRACT

You may accept this Contract, as amended from time to time in accordance with this Contract.

This Contract, the Pool Services offered, and the Pooled Energy owned equipment provided, may not be transferred to any other location or person without our written permission.

6. THE TERM OF THIS CONTRACT

6.1 Starting Date

This Contract starts on the Contract Start Date, which is the date you accept the offer of the supply of electricity by Energy Locals Pty Ltd, ABN 236 064 088 79. Pool Services and charges will start on the Contract Start Date. Your Superseded Contract will come to an end on the day before the Contract Start Date. All subscription adjustments will be made to reflect your new charges under the Contract.

Contract Term

This Contract commences on the Pool Start Date and continues with no fixed term until you cancel it or it terminates for other reasons as described in this document.

6.2 Contract Early Termination

Your contract terminates if:

- (a) You provide 10 days' notice in writing of your intent to terminate this Contract. Following your notice to cancel the Contract, this Contract will end on the later of the date of when:
 - (i) We switch off Our Pool Equipment on the effective date of the cancellation and subsequently remove our equipment, such removal being entirely at our option; and
 - (ii) You have paid your final bill
- (e) You are moving out or vacating your premises, this Contract will end on the later of the date of when:
 - (i) You give us 10 business days' notice that you wish to terminate this Contract and provide us a forwarding address where your final bill may be sent;
 - (ii) You have paid your final bill
- (f) We provide you 10 business days' notice that we are cancelling the Contract.

If your Contract is terminated:

- (a) You must give us safe and unhindered access to your premises to remove any of Our Pool Equipment. This Contract will not end until we have issued you a final bill and you have paid any outstanding amounts for the supply of Pool Services, and any other applicable charges.
- (b) Rights and obligations accrued before the end of this Contract continue despite the end of the Contract, including your obligation to pay amounts to us.

7. SCOPE OF THIS CONTRACT

7.1 Nature of Service

- (a) To deliver Pool Services, we have supplied, and will operate and maintain an Intelligent Pool Controller™ at your pool. We have converted to an Advanced Water Chemistry we will continue to remotely manage the operation of your pool and its water quality using a telecommunications link that will operate via a cellular wireless connection or your home Wi-Fi and Internet connection. The Wi-Fi system must be kept continuously available to allow our service to operate
- (b) In setting up and maintaining a system at your pool, we seek to establish a Standard Operating Environment (SOE) for the control system, the water chemistry and the operation of the pool. This SOE attempts to take into account the individuality and specifics of each pool, its environment and its pool equipment with the overall objective of creating a largely automatic system that provides a good balance of water cleanliness and chemical state, sanitation, energy use, operating cost and owner convenience.

7.2 What is covered by this Contract?

- (a) Under this we also agree to provide our SOE, Our Pool Equipment, sensors, chemicals and Pool Services to you, include:
 - I. The provision, maintenance and operation of our Intelligent Pool Controller™ at your premises. Both the Intelligent Pool Controller™ and any communications equipment supplied by us remain the property of Pooled Energy.
 - II. Access to our Pool App for monitoring the state of the pool and controlling certain aspects of its operation. The App operates on Apple and Android smartphones and Tablets.
 - III. Provision and installation by us of electronic sensors for the measurement of water quality. These sensors are sold to you as they are installed in the pipework at the pool and they become your property and must be maintained in good working order or replaced by you if they fail following their warranty period.

- IV. Establishment by us of an operating plan appropriate for your pool whereby we will remotely monitor and operate Your and Our Pool Equipment for filtration, sanitation and water chemistry as well as operating other mutually agreed devices such as heaters, pool sweeps and robots, water features, lights and, by agreement other household appliances. These latter, as well as selected pool equipment, are usually controlled by Smart Wi-Fi Power Switches operating by switching mains power.
- V. Ongoing monitoring and controlling of the pool operation and chemistry by us to the extent reasonably possible with the limitations of your pool, Your Pool Equipment, the use of Pooled Energy Advanced Water Chemistry, Our Pool Equipment and our SOE.
- VI. Advice by us as to what actions you need to take to keep your pool operating correctly. This advice is provided in addition to any conditions that you may need to observe locally including those which are not monitored by our system, for example, tree branches, organic debris or soil from garden runoff in the pool.
- VII. The provision and delivery, of the proprietary chemicals you need to establish and then maintain Pooled Energy's Advanced, Water Chemistry.
- VIII. When the pool water is diluted by water being lost from the pool due to rain, backwashing or other reasons, Advanced Water Chemistry chemicals must be replenished. Pooled Energy will ship the required quantity of chemicals to you for you to add to the pool. Advanced Water Chemistry chemicals are proprietary and only available from Pooled Energy. You agree to use these chemicals in your pool and add them as directed.
- IX. Salt, or magnesium chloride mineral formulations, are not included with these proprietary chemicals and the addition of salt or magnesium minerals for saltwater chlorination systems is your responsibility.
- X. If you have a liquid chlorine pool, unless otherwise agreed, it is your responsibility to provide the liquid chlorine.
- XI. Whilst pool (hydrochloric) acid, calcium lifter, sodium bicarbonate (buffer), and other specialty pool chemicals are generally not required in pools managed by Pooled Energy using its Advanced proprietary Water Chemistry SOE, some pools may require the supplementary addition of some of these chemicals. In this case, the procurement and addition of these chemicals will need to be done by you, based on our advice.
- XII. Pooled Energy reserves the right to discontinue Pool Services if we advise you of a fault or problem that is your responsibility and cost to rectify and, which is important for the correct and safe operation of your pool, and which you decline to rectify.

- (b) You agree to:
- I. Provide us reasonable access to your property, pool and pool equipment for equipment update, maintenance and chemical delivery during the life of this Contract; and for equipment disconnection and removal at the end of this Contract.
 - II. Where applicable, to provide continuous access to your home Wi-Fi and Internet for telecommunications between the IPC and our central computer and other controlled devices.
 - III. Allow our IPC to remain continuously on-line via the cellular phone network, or, if applicable, via your premise's internet system. The use of either of these telecommunications links allows the IPC to communicate via a secure communications channel to the Pooled Energy Network Operating Centre (NOC). If connection is made via your home Wi-Fi, you will need to give the IPC permission to use your internet gateway by entering your wireless Systems Identification (SSID) and password details via the Pool App on your smartphone or tablet. We will not store these details off-site and will not reveal them to any third party. If any changes occur to your SSID or password, they must be updated by you to maintain connection with the NOC. If your wireless system is unable to communicate reliably to the IPC, it may be necessary to extend the range of your wireless system with a repeater or cable connection to your home router. These will be provided by Pooled Energy.
 - IV. Allow the pool equipment, whether owned by you or by us, to operate automatically without interference under normal circumstances and to not adjust valves, non-IPC controls and devices in such a way that automatic operation is disrupted. You may override the operation of the IPC and thereby the pool equipment from time-to-time if required for maintenance or special operations such as a party, by using the Pool App provided for this purpose, or by using the control panel on the Intelligent Pool Controller if provided, but not otherwise. You agree that this is a managed, automatic system and you give us the right to operate Your Pool Equipment in a manner that we deem necessary for the maintenance of your pool water quality and our SOE, bearing in mind your reasonable preferences.
 - V. Exercise caution as Your Pool Equipment may start at any time and to protect yourself, others and property from any unintended consequences of automatic pool equipment operation, e.g. having your pool cleaner out of the water when the pool equipment starts. If you remove the pool cleaner as in this example, you should first 'tell' the system that the pool cleaner is out of the water so that it does not attempt to start it. The Pool App allows you to do this.
 - VI. Not modify Our or Your Pool Equipment, nor reconfigure it without our agreement as doing so may interfere with our ability to remotely monitor and control the operation of your pool.
 - VII. Regularly remove leaves and other matter from the skimmer box, pump strainer, and pool cleaner based on your own monitoring and as advised by us to do so. Blockages and poor circulation in your pool may otherwise result and cause operational failures in your pool that are not within our control. The cost for remediation is borne by you if damage occurs due to your lack of action.
 - VIII. Ensure that no foreign matter, run off soil, waste materials, fertiliser, garden materials, or other contaminants enter the pool to interfere with the optimal operation of the pool and the pool water chemistry. If such events occur, the cost of remediation of your pool, including potential de-watering/re-watering, special water treatment, and additional chemicals and vacuuming, all as required, is borne by you.
 - IX. Use your Pool App or the push-button controls on the IPC if provided, to disable the system whenever you remove leaves or other material from the skimmers, pump strainers, pool cleaners, or undertake any other action that interferes with the normal, automatic operation of the Pooled Energy system.
 - X. Maintain the required level of water in the pool to ensure the effective circulation and operation of the pumps. Failure to do so may result in operational failures, the cost of remediation of which will be borne by you.
 - XI. Maintain and keep clean Your Pool Equipment and agree that we are not responsible for issues with your pool that result from poor maintenance of Your Pool Equipment.
 - XII. Maintain the filter media to ensure filtration is properly performed. For example, if the sand in the filter is worn out and not operating correctly to clean the water, you will either replace the sand or arrange for us or others to replace it for you.
 - XIII. Maintain power to the Intelligent Pool Controller or the telecommunications link to us, unless required for emergencies or instructed by us.
 - XIV. Add the Advanced Water Chemistry chemicals as advised by us and when received.
 - XV. Procure and add salt to salt pools as requested by us. We monitor the salt level in your pool and will advise as to the quantity required, as required.
 - XVI. Do not add calcium chloride (calcium lifter), sodium bicarbonate (buffer), cyanuric acid (stabilizer) or copper-based algaecides unless advised by us.

- XVII. Acknowledge that while the system will provide improved sanitation and cleanliness compared with most manually managed pools, it cannot sense everything that is going on in the pool and that the responsibility for the safety of the pool and those using it, remains irrevocably yours and we cannot and do not take any legal or other responsibility not prescribed by law for Pool Services, pool operation or use.
- XXVIII. Understand your operating plan and advise us if you want changes to it beyond what you can change via our App.
- XIX. Acknowledge that we are not liable for any salt water damage to the garden, the pool structure, the pool surface finish, the pool deck and surrounds, or any pool related or household equipment or structure.
- XX. Provide safe storage, handling and management for any pool related chemicals, in a location out of direct sunlight and away from children and pets. Pooled Energy will normally provide an industry standard container for any chemicals it supplies. Any liability for injury, damage or death from the inappropriate storage or unsafe management or incorrect use is yours.
- XXI. Be responsible for the charges for Pool Services and pay the amounts billed by us under this Contract until this Contract ends for one of the reasons specified in clause 6.
- XXII. Maintain the physical pool, its surrounds, integral and connecting plumbing and associated fittings such as but not limited to lights, in-floor cleaning systems, drains, balance tanks, water level management systems and hydrostatic valve, in good order and with no leaks, as defects may negatively impact on your pool operations and chemistry.
- XXIII. Hold harmless and not make any claim on us or our technology partners or affiliated companies for any damage or harm caused or perceived to be caused by operation of Our Pool Equipment, directly or indirectly, or our personnel or representatives to the extent permitted by law.
- XXIV. Meet your obligations under this Contract and the Australian Consumer Law.

7.3 What is not covered by this Contract?

In addition to the items mentioned elsewhere in this Contract, Pooled Energy is not liable for the following:

- (a) Repair or maintenance of Your Pool Equipment. Pooled Energy and its partners offer repair and maintenance services for a wide range of pool equipment at additional cost unless specifically agreed otherwise, or you may use others provided they replace equipment like for like, do not reconfigure the system or disrupt its operation.
- (b) Procurement and adding to your pool of salt for saltwater pools.

- (c) Any damage to property or persons resulting from tampering or interfering with the normal operation of the pool equipment in accordance with our SOE, any chemicals provided, contact with effluent, or use of chemicals.
- (d) Any damage directly or indirectly attributable to naturally occurring events such as storms, flooding, or other weather events that may result in your pool becoming damaged or unclean.
- (e) The physical connection of your premises or connection within your premises of the water supply, electricity supply, gas supply or telecommunications system equipment and the maintenance of those connections and supplies to your premises.
- (f) The supply of any supplementary chemicals as suggested by us or for unusual situations that are beyond those envisaged for normal operations under this Contract. Such situations are normally, but not exclusively, the result of contamination or poor maintenance of your pool.
- (g) Maintenance and wear and tear and any effects of salt water and pool chemicals on equipment, clothes and other possessions owned by you, or otherwise on site and not provided by us, including the pool shell, pool surface, pool tiles, pool surrounds and edging, pool sweep, clothing and other third-party equipment including heaters.
- (h) Any damage caused or issues which previously existed and/or becomes evident upon partial or complete emptying of pool water for any reason.
- (i) Any damage to the pool surface or surrounds caused by us controlling your Pool sweep or in-floor cleaner or other third party equipment.
- (j) Any staining, erosion, pitting or plating of the pool surface.
- (k) Water consumption.
- (l) Sewerage charges.
- (m) Pool certification and registration.

8. YOUR GENERAL OBLIGATIONS

8.1 Full information

You must give us any information we reasonably require for the purposes of this Contract. The information must be full and correct, and you must not mislead or deceive us in relation to any information provided to us.

8.2 Updating information

- (a) You must tell us promptly if any information you have provided to us changes, including if your billing address changes; or
- (b) If the swimming pool is modified or damaged, or services to it are impaired in any way; or
- (c) If you are planning to install any photovoltaic solar panels or other electricity generation.

8.3 Security and safety

- (a) You must not interfere with the operation of our equipment or use it inappropriately. In the event of any damage occurring to this equipment you must immediately notify Pooled Energy.
- (b) The area, shed, enclosure or room or combinations thereof where Our Pool Equipment is housed, are to be maintained in a state that ensures that the equipment is safe and will not incur damage or degrade. The pool equipment is designed to be resistant to spraying water and to operate at temperatures up to 45°C but it should be shielded from direct sunlight. All chemicals, including those procured by you, must be shielded from direct sunlight and not exposed to high temperatures, water ingress or access by children or animals.
- (c) All chemicals must be treated as hazardous and there must be no interference with chemicals nor inappropriate or unsafe use.
- (d) The waste pipe for backwash, empty and overflow must be connected to a sewer line or gully by law and it is your responsibility to make such available or provide ready access. You must not interfere with this pipe or allow yourself or others to contact any effluent from it.
- (e) Children and pets must not be allowed to access the pool equipment and/or chemicals.

8.4 Ownership of the pool equipment

- (a) Pooled Energy is the owner of the Intelligent Pool Controller and communications equipment provided, collectively Our Pool Equipment, and not sold to you.
- (b) You must protect our ownership of Our Pool Equipment and not attempt to sell, hire or deal with; or damage it in any way.

9. OUR LIABILITY AND OBLIGATIONS UNDER THE AUSTRALIAN CONSUMER LAW

9.1 ACL

The Australian Consumer Law (contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) (**ACL**) provides certain rights, warranties and guarantees to consumers in respect of the supply of goods and services which cannot be excluded by law. Nothing in this Contract is intended to have the effect of excluding any right, warranty or guarantee arising under the ACL or any other applicable law that cannot be excluded, restricted or modified by agreement of the parties (collectively **Non-Excludable Rights**).

9.2 Liability in relation to Pool Services

Subject to clause 9.1,

- (a) the quality and reliability of the Services are subject to a variety of factors that are beyond our control. These include accidents, emergencies, weather conditions, vandalism, electricity system demand, electricity supply failure, Internet failure, and spillages into the pool, the technical limitations and condition of your pool and Your Pool Equipment and Our Pool Equipment, and the acts of other persons;
- (b) we give no condition, warranty or undertaking, and we make no representation to you, about the condition or suitability of Pool Automation Services, their quality, fitness for purpose or safety, the SOE, or chemicals, other than those set out in this Contract or which are Non-Excludable Rights and our liability to you for failure to comply with any conditions, warranty, undertaking, or guarantee that applies under any applicable law is excluded. Where liability cannot be excluded but is lawfully permitted to be limited, our liability for failure to comply with any such condition, warranty, undertaking or guarantee is limited (at our option) to the replacement of the goods, the supply of equivalent goods or the payment of the cost of acquiring equivalent goods; in the case of a service, our liability is limited to the re-supply of the service or the payment of the cost of having the service supplied again;
- (c) Pooled Energy will manage your pool to provide generally accepted best practice under our SOE for swimming pools. Any issues associated with Your Pool Equipment and pool infrastructure including pool surface and provision of adequate circulation will be your responsibility;
- (d) Pooled Energy is not liable for any problems resulting from loss of communications or internet service or connectivity. Any costs, losses, incorrect operation of the pool or its equipment associated with loss of or inadequate communications, will be borne by you;
- (e) Pooled Energy does not accept liability for Consequential Loss .

10. PRICE FOR POOL SERVICES AND OTHER GOODS AND SERVICES

10.1 Fees and charges - Pool Services

You will be charged for:

- (a) your Pool Services fees and charges which are charged monthly on your invoice and are at the rates provided on your Superseded Contract.
- (b) any additional equipment or other services that you wish to purchase from us from time to time based on a quote provided to you by us; and
- (c) additional services charges resulting from defects in your pool or equipment condition affecting the management of your pool, such as leaks, poor circulation and other issues resulting in accelerated chemical dilution.

10.2 Additional Fees and Charges

In addition to the amounts referred to in paragraph 10.1 above, the tariffs and charges that you are required to pay may include any or all of the following:

- (a) Late payment fees in accordance with clause 12.5;
- (b) Merchant service fees in accordance with clause 12.6;
- (c) Fees for dishonoured payments in accordance with clause 12.7;
- (d) Any other fees set out in your Contract; and
- (e) Fees for any other goods or services required, or requested by you, on a case-by-case basis.

10.3 Changes to Pool Services Fees

- (a) We may vary the Pool Services fees that apply to your Contract due to change in market conditions or an increase in third party costs by providing you with 30 days' prior written notice (**Price Variation Notice**).
- (b) In addition to your rights under clause 6.2, you may terminate this Contract within 30 days after you receive a Price Variation Notice by providing us with written notice of your intention to terminate (**Termination Notice**). If you do not provide us with a Termination Notice within the required time period, you are deemed to have accepted the fee increase and such fee increase will apply from your next bill onwards.
- (c) Under ordinary circumstances, we will not vary the Pool Services fees more often than once per year.

10.4 Pro rata calculations

If a fee or other charge applying to you changes during a billing cycle, we may calculate your next bill on a proportionate basis.

10.5 GST

- (a) Amounts specified in your Contract, from time to time as required, and other amounts payable under this Contract, such as for Pool Services, may be stated to be exclusive or inclusive of GST. Paragraph (b) applies unless an amount is stated to include GST.
- (b) Where an amount paid by you under this Contract is payment for a "taxable supply" as defined for GST purposes, to the extent permitted by law, that payment will be increased so that the cost of the GST payable on the taxable supply is passed on to the recipient of that taxable supply.

11. BILLING

11.1 General

- (a) We will only bill you electronically by email at an email address nominated by you, addressed either to you or to someone nominated to act on your behalf.
- (b) If you change your email address then please notify us by email within 14 days.

11.2 Calculating the bill

Unless otherwise agreed, the bill we send to you will be calculated on a fixed monthly fee for the Pool Services.

12. PAYING YOUR BILL

12.1 What you have to pay

You must pay to us the amount shown on each bill on or before the date for payment on the bill.

12.2 Payment options

Unless we make a different agreement with you in accordance with the law, you can pay your bill by any of the options listed on your bill.

12.3 Issue of reminder notices

If you have not paid your bill by the pay-by date, we will send you a reminder notice that payment is due and must be paid. The reminder notice will give you a further due date for payment that will not be less than 6 business days after we issue the notice.

12.4 Difficulties in paying

If you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about payment options, including the option of paying the Pool Services fees and any additional pool costs under a payment plan.

12.5 Late payment fees

We may require you to pay interest on any overdue amount owing under this Contract.

12.6 Merchant service fees

A merchant (e.g. credit card) service fee may be applicable to particular methods of paying your bills as set out in your Plan Details, or with prior notice that such a fee is to apply.

12.7 Fees for dishonoured payments

If, due to fault by you, your payment is dishonoured or reversed and it results in us incurring a fee, we may recover the amount of this fee from you.

13. SUSPENSION OF POOL SERVICES

We may arrange for the suspension of Pool Services at your premises if:

- (a) You do not pay your bill in full by the pay-by date.
- (b) You do not meet your obligations under this contract;
- (c) You do not provide us access to your premises or Wi-Fi and Internet for the purposes of maintaining our equipment or providing services for your pool; or
- (d) You interfere with the operation of Our Pool Equipment or our remote operation of Your Pool Equipment,
except to the extent that we have caused any of the events listed in sub-clauses (a) - (d).

14. NOTICES AND BILLS

- (a) To become a Pooled Energy customer you must agree to electronic billing and notification as part of this Contract.

- (b) A notice or bill sent under this Contract is taken to have been received by you or by us (as relevant) on the date of transmission by email without it being returned by the email service to the party (in either case).
- (c) Our contact details for you to contact us or send us a notice are as set out in our bill to you, or as notified to you from time to time.

15. PRIVACY ACT and DATA SECURITY

- (a) We will comply with all relevant privacy legislation in relation to your personal information.
- (b) We may carry out a credit check on you and use the information to establish our view of your creditworthiness. In order to carry out a credit check, we may disclose your personal information to a credit reporting agency for the purposes of obtaining credit reports about you relating to your consumer credit and commercial credit history. In accordance with relevant laws, we may report an overdue payment to a credit reporting agency.
- (c) You can find our Privacy Policy Statement on our website. If you have any questions, you can contact our privacy officer.
- (d) As part of its services supplied to you, Pooled Energy communicates to the internet via your homes internet connection While we make very significant efforts to fully secure the access to your home's data network, due to the inherent nature of the technology of the Internet, we cannot guarantee that access to your home's data network cannot be achieved by other parties.
- (e) While we make significant efforts to guard your Personal Information and data, due to the inherent nature of the Internet and electronic storage and communication systems, we cannot guarantee that any information, during transmission through the Internet, communications via electronic mail or while stored on our systems or otherwise in our care, will be absolutely safe from access by others. In the event of any breach of data security related to internet security. Our liability is limited to advising you of the occurrence as well as taking all practical steps to prevent a recurrence.

16. COMPLAINTS AND DISPUTE RESOLUTION

16.1 Complaints

- (a) If you have a complaint relating to the sale of Pool Services by us to you, or this Contract generally, you may lodge a complaint with us in accordance with our complaints and dispute resolution procedures which are available on our website.

- (b) If you have a query, a complaint or dispute, contact us via email at info@pooledenergy.com.au or by phone on 1300 364 703.

16.2 Our obligations in handling complaints

- (a) If you make a complaint, we will handle your complaint in accordance with our complaints and dispute resolution procedures, which can be found on our website.
- (b) We will respond to your complaint within the required time frames set out in our complaints and dispute resolution procedures and inform you:
- (c) Of the outcome of your complaint and the reasons for our decision.

17. FORCE MAJEURE

17.1 Effect of force majeure event

If either party to this Contract cannot meet an obligation under this Contract because of an event outside the control of that party (“a force majeure event”):

- (a) The obligation, other than an obligation to pay money, is suspended to the extent it is affected by the force majeure event for as long as the force majeure event continues; and
- (b) The affected party must use its best endeavours to give the other party prompt notice of that fact including full particulars of the event, an estimate of its likely duration, the extent to which the affected party's obligations are affected and the steps being taken to remove, overcome or minimise those effects.

17.2 Deemed prompt notice

If the effects of a force majeure event are widespread, it is deemed that you have been given prompt notice if we make the necessary information available by way of a 24-hour telephone service, email or website posting within 30 minutes of being advised of the event.

17.3 Obligation to overcome or minimise effect of force majeure event

A party that claims a force majeure event must use its best endeavours to remove, overcome or minimise the effects of that event as soon as practicable.

17.4 Settlement of industrial disputes

Nothing in this clause requires a party to settle an industrial dispute that constitutes a force majeure event in any manner other than the manner preferred by that party.

18. APPLICABLE LAW

This Contract is governed by the laws in force in the State in which your premises are located.

19. GENERAL

19.1 Title

The title of the Pool Equipment supplied and operated on your premises by Pooled Energy remains with Pooled Energy other than where explicitly sold in which case title passes on full payment.

19.2 Our obligations

Some obligations placed on us under this Contract may be carried out by another person or sub-contractor. If an obligation is placed on us to do something under this Contract, then:

- (a) We are taken to have complied with the obligation if another person or sub-contractor does it on our behalf; and
- (b) If the obligation is not complied with, we are still liable to you for the failure to comply with this Contract.

19.3 Amending this Contract

- (a) We may amend this Contract from time to time to;
 - (i) Reflect any laws, codes, regulatory guidelines, or instructions by the relevant regulator that are amended or introduced after this Contract commences; or
 - (ii) Reflect changes in market conditions, the nature of our provision of the Pool Automation Services or changes in our technology,
- (b) If we amend this Contract we will provide you with 30 days' written notice (**Variation Notice**). In addition to your rights under clause 6.2, you may terminate this Contract within 30 days after you receive a Variation Notice by giving us written notice of your intention to terminate (**Termination Notice**). If you do not give us a Termination Notice within the required time period, you are deemed to have accepted the updated Contract, which will apply from the date of your acceptance and will supersede all previous terms and conditions imposed by us in relation to this Contract.

19.4 Transferring the contract

- (a) You cannot transfer this Contract to another person or premises or pool without our prior written consent.
- (b) We may transfer our rights and obligations under this Contract to another entity;
 - (i) That is a related corporate entity;
 - (ii) That has acquired all or substantially all of our business, customer base or licenses to operate;
 - (iii) By assigning the benefit of this Contract by way of security to a provider of finance to us;
 - (iv) As part of a transfer of all or a substantial number of our customers to a 3rd party; or
 - (v) Otherwise, if you consent.

20. EXPLANATION OF TERMS

20.1 Simplified explanation of terms used in the contract

Billing cycle means the regular recurrent period for which you receive a bill from us, normally monthly.

Business day means a day other than a Saturday, a Sunday, or a public holiday.

Force majeure event means an event outside the control of a party.

GST has the meaning given in the *GST Act (A New Tax System (Goods and Services Tax) Act 1999* (Cth));

Advanced Water Chemistry means Pooled Energy's proprietary chemicals and method of control to provide the SOE.

Authorised Operator means a person or corporation that has legal authority to enter into a Contract for Pool Services and for the modification of existing equipment at the pool and the installation and operation of new equipment provided by Pooled Energy as part of the Pool Services;

Consequential Loss means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity;

Contract has the meaning given in clause 2.

Contract End Date means the date on which this Contract ends at the end of the contract term or due to termination of the contract by either you or us;

Contract Start Date is the date on which this Contract starts as determined under clause 6;

IPC or Intelligent Pool Controller means the control equipment including remote or local power switching modules. This equipment remains the property of Pooled Energy and is operated by Pooled Energy as part of the Pool Services offered;

Pool App means a software application running on certain types of smartphone or tablet for the monitoring and control of your pool.

Your Pool Equipment means the equipment installed at your swimming pool and owned by you;

Our Pool Equipment means the equipment provided at your swimming pool by Pooled Energy but not sold to you and includes the Intelligent Pool Controller hardware and software, any power switching modules included, any additional hardware or software specially nominated and advised to you at approximately the time the system is set-to-work and handed over to you, and any information or data produced by the entire system, all of which is the property of Pooled Energy.

Pool Owner ("Owner") or Swimming Pool Owner means a person who has the legal right to authorise changes to the swimming pool and its equipment at the premises;

Pool Services means the services set out in clause 7;

Pool Services Start Date means the date we started supplying pool service to your premises.

Pooled Energy Proprietary Chemicals means the proprietary Pooled Energy chemicals provided as part of the pool services;

SOE means our Standard Operating Environment for pools, their energy and pool equipment management and water chemistry;

Superseded Contract has the meaning given in clause 2.